IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 236 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE MD SHAH

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UNITED INDIA INSURANCE CO LTD. - Appellant(s)
Versus
ROSHANBEN WD/O. JUSABBHAI DELA & 3 - Defendant(s)

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Appearance :
MR RR MARSHALL for Appellant(s) : 1,
MR KISHOR M PAUL for Defendant(s) : 1,
None for Defendant(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4 - 4.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 01/05/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1. On going through the record, it clearly appears that this appeal can be disposed of finally at this juncture.

2. Learned advocate Mr.R.R.Marshal for the United India Insurance Co. Ltd., Original Opponent No.2 in MAC Petition No.638/2005 is heard extensively. Learned advocate Mr.Paul though appears as a Cavetor on behalf of

the claimants of MAC Petition No.638/2004 waives service on behalf of claimant in this First Appeal. He is also heard extensively.

3. This first appeal is preferred against judgment and award passed on 30th July, 2005 by learned Presiding Officer, MAC Tribunal (Aux.), Rajkot in MAC Petition No.638/2004. By way of compensation, the claimants were held entitled to recover the sum of Rs.6,52,000/- for the death of Jasubhai V. Dela and further the Tribunal also awarded an amount of Rs.50,000/- for the damages of said Chhakdo Rikshaw along with proportionate cost and interest thereon at the rate of 9% p.a. from the date of filing of the claim petition till realization of the amount from the opponents jointly and/or severally.

4. Original opponents i.e. the owner of vehicle No.GJ-3-AB-8007, vehicle named as Scorpio, had been joined in the petition as Original Opponent No.1 and respondent No.7 in this First appeal. In the facts and circumstances of the case, when joint and several liability is fixed upon both the opponents and since this first appeal is preferred only by the insurance company, original opponents No.2, of the claim petition in respect of quantum of compensation, we deem it proper that after hearing learned advocate for the appellant, insurance company and learned advocate for the claimants i.e.

respondent No.1 to 6 herein, this appeal may be disposed of finally.

5. For the short facts, it may be stated that the accident in question occurred on 9th February, 2004 at about 4.00 p.m. at Rajkot, Kotharia Ring Road, Rajkot. While deceased Jasubhai V.Dela was driving his Chhakdo Rikshaw bearing registration No.GRP-6387 on the correct side of the road and with moderate speed the other vehicle Scorpio, came in rash and negligent manner and dashed against the front side of Chhakdo Rikshaw, resulting into instant death of the deceased. The original claimants are legal representative of deceased Jashbhai V.Dela. It was urged before the Tribunal that the deceased was 31 year old at the time of accident and was earning Rs. 7,000/- p.m. The claim was filed for recovery of an amount of Rs.6,00,000/- from the opponents.

6. We have gone through the record and documents shown by learned counsels, the learned Tribunal also referred to some decision but the fact remains that this is a case wherein the deceased met with an instant death and therefore conventional amount tune up to the extent of Rs.1 Lac. is to excessive and to arrive at just compensation. This amount is required to be reduced.

While going through the award and after hearing both

the learned counsels, it appears that the learned Tribunal awarded an amount of Rs.1,00,000/- towards conventional amount of shock and suffering.

7. This is a case wherein an amount of Rs.20,000/- as settled by various decision would meet the end of justice and having regard to the facts and circumstances of the case it would be appropriate to reduce the amount of Rs.1,00,000/- to Rs.20,000/- i.e. 80,000/- less than the awarded amount towards non pecuniary conventional amount.

8. Accordingly, we hold that the claimants are entitled to compensation of Rs.20,000/- instead of Rs.1,00,000/- as awarded by the Tribunal towards the head of conventional amount.

9. Likewise this is also claim for personal injury as well as claim for damages to the vehicle involved in the accident. The learned Tribunal vide para 13 came to the conclusion that the claimants produced numbers of receipts by way of evidence vide Exh. 42, 43 and 44 which are vouchers for carrying out repairs to damage Chhakdo Rikshaw. The learned Tribunal awarded Rs.50,000/- being total amount of said vouchers. It is true that in panchnama as well, the damage was assessed to the tune of Rs.50,000/-. However, learned Tribunal did not take into account the model and the year of Chhakdo Rikshaw and as to whether even before accident, this Chhakdo Rikshaw

had required any repairs. To arrive at just compensation, on this count, there is no evidence from the claimant side to the extent that all the repairs which were carried out were on account of damage caused to said Chhakdo Rikshaw in the accident. In this circumstances, making concession for the factors not brought on record and which were required to be brought on record, this amount is also required to be reduced. However, hearing both the learned counsels and also after having consdered Exh.42, 43 and 44, in our humble view, the claimants would be entitled to the amount of Rs.30,000/- towards damage caused to Chhakdo Rikshaw in the accident. Thus, an amount of Rs.20,000/- is reduced under this head of compensation.

10. While we assessed and examined this First Appeal on all other points, we find that no intereferance is further required by this Court for the award passed by the Tribunal either on the issue of negligence or on the issue of awarding compensation on the heads mentioned in the award except compensation awarded towards conventional amount and compensation awarded to damaged vehicle.

11. In this view of matter, this appeal is allowed to the above extent and judgment and order impugned in this appeal is modified to the extent that the claimants are entitled to recover a sum of Rs.

5,72,000/- (instead of Rs.6,52,000/- as awarded by the Tribunal) as compensation for death of Jasabhai Viharbhai as well as Rs.30,000 (instead of Rs.50,000 as awarded by the Tribunal) towards damages of Chhakdo Rikshaw along with proportionate cost and interest thereon at the rate of 9% p.a. from the date of filing of claim petition till the realization from the opponents, jointly and/or severally. The rest of the judgment and award is not interfered with.

12. The appellant herein is directed to deposit the aforesaid modified award amount before the Tribunal within 2 months from today.

13. The amount deposited by the appellant before this Court u/s.173 of the MV.Act be transmitted immediately to the Tribunal. This appeal is disposed of and stands allowed to the above extent.

(J.R.VORA, J.) (M.D.SHAH, J.)

*Ashish